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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,412	12/05/2003	Robert P. Kusy	5470-286DV	9571
20792 7590 02/17/2010 MYERS BIGEL, SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627				
EXAMINER BUTLER, PATRICK NEAL				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
02/17/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT P. KUSY, SCOTT ZUFALL, MATTHEW CAMP,
GLENYS THORSTENSON, BRIAN RUCKER, HIAWATHA DEMBY,
DAVID RUDDLELL, ELODIA COLE, and ADITYA PATEL

Appeal 2009-004200
Application 10/729,412
Technology Center 1700

Mailed: February 17, 2010

Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER DISMISSING APPEAL

On February 18, 2008, Appellants filed a Notice of Appeal. On April 17, 2008, Appellants filed an Appeal Brief to which the Examiner responded by filing an Examiner's Answer on June 23, 2008. The Examiner's Answer contained a new ground of rejection designated in accordance with MPEP § 1207.03. According to MPEP § 1207.03 states that an appellant must respond to a new ground of rejection by filing either:

- (A) a reply in compliance with 37 C.F.R. § 1.111 to request that prosecution be reopened; or
- (B) a reply brief that addresses each new ground of rejection in compliance with 37 C.F.R. 41.37(c)(1)(vii) to maintain the appeal.

In addition, 37 C.F.R. § 41.39(b) states that an appellant has within two months to respond. Appellants have not responded within the specified timeframe.

Accordingly, it is ORDERED that the appeal which was filed on August 07, 2008, be dismissed.

The application is being returned to the Examiner for further action as may be appropriate.

If there are any questions pertaining to this dismissal, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DISMISSED

sld

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